

Syntech IT Pty Ltd (ABN 34 158 224 956), trading as Syntech IT ("Syntech IT")

## **STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES ("STANDARD TERMS")**

### **1. APPLICATION OF THESE STANDARD TERMS**

1. A person or company (**Customer**) that places an order with Syntech IT (**Order**) for the provision of services (**Syntech IT Services**), subject to Syntech IT's acceptance of the Order, enters into a binding legal agreement with Syntech IT (the **User Agreement**) which consists of:
  - the Order;
  - these Standard Terms and Conditions of Service ; and
  - the Service Level Agreement. The Service Level Agreement details the terms and conditions of requesting support from Syntech IT, Syntech IT's Service Level Commitment, the process for requesting Service Level Credits, and the terms and conditions relating to Syntech IT System Maintenance.
2. By placing the Order, the Customer agrees to be bound by the User Agreement and Syntech IT will create the Customer's account for the Syntech IT Services (**Customer Account**).

### **2. INTERPRETATION**

1. In the User Agreement, unless the context requires otherwise:
  - The singular includes the plural and vice versa.
  - A reference to any gender includes all other genders.
  - A reference to a statute means that statute as in force from time to time, and to any statute passed in substitution for that statute.
  - The word *includes* means *includes but is not limited to*.
  - Where one part of speech of a word is defined, other parts of speech of that word have corresponding meanings.
  - A reference to A\$, \$A, dollar, or \$ is to Australian currency.
  - If a day on or by which an obligation must be performed or an event must occur is not a business day in the place where it is to be performed, the obligation must be performed or the event must occur on or by the next business day.
  - Headings are for ease of use and reference only, and do not affect interpretation.
  - *In Writing* includes emails.

### **3. PROVISION OF THE SERVICES**

1. Syntech IT Services are intended for use by commercial entities (including non-profit and charitable entities, government agencies and departments, schools, and similar organisations). Any individual placing an order accepts this limitation, and further accepts that any Consumer Protection legislation which operates in any jurisdiction does not apply to the User Agreement, to the degree permitted by law.
2. Syntech IT Services are provided only to individual Customers who are 18 years of age and older.
3. Syntech IT will commence supplying the Syntech IT Services to the Customer within seven days of the date of the Customer's first payment for the Charges unless otherwise agreed in writing with the Customer.
4. Syntech IT will continue to provide the Syntech IT Services unless suspended in accordance with Section 8 or until the User Agreement is terminated in accordance with Section 10.
5. Each Syntech IT Service has a specification and description of suitable use (**Product Description**). It is the responsibility of the Customer to ensure that the particular Syntech IT Service selected is appropriate for their needs.
6. As part of the sign-up process, Syntech IT will provide the Customer with the log-in information necessary for the Customer to access and use the Syntech IT Services.

#### 4. CHARGES

1. The initial subscription to a Syntech IT Service requires the Customer to provide the details of a valid and accepted credit card or completed direct debit form for payment.
2. The credit card data provided by the Customer to Syntech IT will be used to establish a payment account with a third-party payment processor. The credit card details will be held by Syntech IT to facilitate subsequent payments.
3. The Customer is responsible for ensuring that the credit card details provided to Syntech IT are current and correct.
4. Charges for the Syntech IT Services (**Charges**) will be calculated according to the billing option and pricing structure for the particular Syntech IT Services selected by the Customer and charged in advance to the Customer's credit card.
5. All Charges are exclusive of taxes, duties and government charges, other than income tax, imposed or levied in Australia or overseas in relation to the supply of the Syntech IT Services (**Taxes**). The Goods and Services Tax (**GST**) and other Taxes imposed on Syntech IT shall be added to the Charges where applicable, and shall be paid in accordance with Section 5.
6. The Customer is liable for all Charges for Syntech IT Services accessed through the Customer's identification or log-in information whether authorised by the Customer or not, other than unauthorised access resulting from the negligence or wrongful conduct of Syntech IT.

7. Charges may be modified in accordance with Section 12.

## 5. PAYMENT

1. Syntech IT provides a pre-paid service. Therefore the Customer must pay any Charges in advance by the due date specified to the Customer by Syntech IT to receive the Syntech IT Services.
2. Syntech IT is not required in any circumstances to refund any prepaid charges unless the Customer's account is terminated by Syntech IT in accordance with Section 10.
3. All overdue Customer Accounts will incur interest at the rate prescribed under the Penalty Interest Rate Act (Vic.).
4. Syntech IT may refer Customer Accounts more than 30 days in arrears to a debt collection agency, without notice to the Customer.
5. The Customer must pay Syntech IT on demand any expenses incurred by Syntech IT as a result of the Customer's failure to pay the Charges by the due date, including debt collection fees and Syntech IT's legal costs on a full indemnity basis, regardless of whether Syntech IT has commenced legal proceedings to recover the amount due.
6. If the Customer has a bona fide dispute regarding the Charges payable on the Customer's Account (**Dispute**), and has notified Syntech IT of the Dispute and the reasons for it, the Customer may withhold the disputed amount of the Charges until the Dispute is resolved, but must not withhold any other part of the Charges.
7. The Customer must pay Syntech IT the undisputed amount of the Charges immediately and the disputed amount of the Charges within 60 days of the due date for payment unless the Dispute has been resolved or referred by a party to a court, tribunal, or other body with authority to resolve it.

## 6. USE OF THE SERVICES

1. The Customer is responsible at its own expense for the provision of all equipment, including computer hardware and telecommunication connections, needed to use and access the Syntech IT Services.
2. The Customer must comply with:
  - all laws and all reasonable directions from Syntech IT in relation to the use of the Syntech IT Services; and
  - any other reasonable policies Syntech IT may notify to the Customer from time to time in connection with the provision or use of, or access to the Syntech IT Services.
3. If the Syntech IT Services include hosting services which incorporate material created by third parties, the Customer must obtain, at its own expense, all necessary

authorisations for Syntech IT to use or reproduce the material to the extent necessary to provide the Syntech IT Services.

4. The Customer must ensure any person who accesses the Syntech IT Services does not use, or attempt to use, the Syntech IT Services:
  - to infringe the intellectual property rights of any person, including use, sale, or transmission of software or other material which infringes copyright;
  - to publish, distribute, or issue any information or material which is illegal in the State of Victoria, obscene, defamatory, threatening, or abusive, or which vilifies any group of persons;
  - for any purpose or activity which is illegal, or to promote any such activity;
  - in a way that is inconsistent with the Product Description, and in particular, use the Syntech IT Services to perform tasks or activities proscribed in the Product Description for that Service, if any;
  - to provide links to another website which contains any content which contravenes these conditions;
  - to interfere with or disrupt Syntech IT or its business, other Internet users or other service providers, or their computers, software or hardware, including by the propagation malicious software such as computer worms, Trojans, and viruses;
  - to access without authorisation any other computer accessible via the Syntech IT Services.
  - with any software that enables online anonymity, misleading IP identification, provides a hidden service, or prevents Syntech IT from complying with legal obligations.
5. The Customer shall take all reasonable steps to ensure that the Customer's hardware, software, or network configuration (including IP addresses) are not used to cause any security breach or attack on Syntech IT's or other Customers' hardware, software or network configurations.
6. The Customer must not run software that is intended, or has the effect of, adversely impacting other customers, servers (physical or virtual), or platforms within the Syntech IT network, or interrupting or causing data collection systems (including billing and rating systems) from correctly operating.
7. The Customer is responsible for all access and activities undertaken through their account. Syntech IT is not responsible for any damages whatsoever arising from the disclosure of the Customer's passwords or a third-party gaining access to the Customer's account due to insecure or weak password selection by the Customer.
8. If the Customer has reason to believe or be concerned that their Syntech IT Services or Account has been compromised, they should notify the Syntech IT Service Desk immediately.

9. The Customer must ensure that the Account information it provides to Syntech IT is complete, accurate and up to date throughout the period that Syntech IT provides the Syntech IT Services to the Customer. Syntech IT relies on this Customer-provided information for notifications and other communication. Syntech IT will not be liable for any damages or costs arising as a consequence of the Customer's details being out of date or otherwise incorrect due to the Customer's inaction or providing incorrect or incomplete information to Syntech IT.

## 7. BACK-UPS AND REDUNDANCY

1. Unless explicitly stated in the Product Description for a Syntech IT Service, Syntech IT does not back up or otherwise replicate a Customer's Service or the data associated with the Syntech IT Service.
2. Unless explicitly stated in the Product Description for a Syntech IT Service, the Syntech IT Service is not provided on a redundant or high-availability basis. If a platform from which the Syntech IT Service is provided fails, the Customer may permanently lose data and any Syntech IT Service would be unavailable until the Syntech IT Service is restored.
3. Syntech IT will only perform backups of a Customer's Syntech IT Service if the Product Description explicitly states backups are included, or if there is an agreement between Syntech IT and the Customer in writing for Syntech IT to perform backups as part of a subscription.
4. If the Customer's Syntech IT Service does not include backups under section 7.3, the Customer will be solely responsible to perform or to arrange any backups necessary to protect the Customer from data loss.
5. If Syntech IT has performed a backup for the Customer under section 7.3, the Customer may request data be restored (**Restore**) from the backup. To arrange a Restore, the Customer must raise a support ticket with the Syntech IT Service Desk according to the process described in the Technical Support section of the SLA. The Customer needs to specify the data to be restored in the ticket.
6. Unless otherwise specified in the Product Description, restores on Shared Hosting subscriptions are charged at \$80 +GST during Standard Business Hours, or \$250 +GST per restore (minimum one hour) outside of Syntech IT's Standard Business Hours.
7. For subscriptions other than Shared Hosting, Syntech IT will provide one Restore per Customer Service per calendar month without charge. Subsequent Restores are charged at \$140 +GST per hour during Standard Business Hours, or \$250 +GST per hour (minimum one hour) outside of Syntech IT's Standard Business Hours.
8. The charges for Restores in sections 7.6 and 7.7 may be changed by Syntech IT from time to time by Syntech IT posting the new charges on its website.

## 8. SUSPENSION OF SERVICES AND REMOVAL OF CUSTOMER CONTENT

1. Syntech IT may from time to time, without need to issue notice to the Customer, suspend a Syntech IT Service or Services, or disconnect or deny the Customer access to the Syntech IT Services if:
  - the Customer breaches the User Agreement;
  - the Customer provides Syntech IT with false, incomplete or out of date information that in Syntech IT's reasonable opinion results in an operational issue;
  - the Customer's Account is overdue or in arrears;
  - it is necessary to do so due to any technical failure of, or for the upgrading or scheduled, preventative or remedial maintenance of Syntech IT's systems and software;
  - in Syntech IT's reasonable opinion, it is required by law to do so; or
  - in Syntech IT's reasonable opinion, the Customer's use of the Syntech IT Services adversely affects Syntech IT system performance or the integrity of the Syntech IT network or systems.
2. The Customer must consult Syntech IT before undertaking any actions that do not fall inside the day to day operation of their Syntech IT Service, including the running of any load or penetrating testing. Failure to do so may result in immediate suspension of the service if the actions are seen as a threat to the Syntech IT network.
3. Syntech IT Services suspended under this Section will not be reinstated until the breach is remedied, if capable of being remedied, or the account and any penalty is paid in full, and a fee of \$75 for the administrative costs of reinstatement is paid. Syntech IT reserves the right to increase the reinstatement fee in the event that there are multiple instances of suspension caused by the Customer's actions.
4. Syntech IT may permanently remove the Customer content (including data, code, and applications) and backups if the Customer's Service is suspended for more than 10 business days.

## **9. WARRANTIES AND LIMITATION OF LIABILITY**

1. Syntech IT does not give any express warranties in relation to the Syntech IT Services, including warranties that:
  - customers will have continuous access to, or usage of, the Syntech IT Services;
  - data stored on Syntech IT Servers will not be lost or corrupted;
  - it will be possible to restore Customer Content from Syntech IT's back up media; or
  - Syntech IT will be able to prevent unauthorised persons obtaining access to Customer Content.

2. Any term, condition, guarantee, or warranty which would otherwise be implied into this User Agreement is excluded, to the degree permitted by law.
3. If a term, condition, guarantee, or warranty is implied into this User Agreement by law, Syntech IT's liability to the Customer in relation a breach of that term, condition, guarantee, or warranty is limited, to the extent it is lawful to do so, to one or more of the following:
  - the supplying of the Syntech IT Services again; or
  - the payment of the reasonable costs of having the Syntech IT Services supplied again.
4. The Customer acknowledges that Syntech IT does not and cannot control, supervise, or edit any information or material accessed through the Syntech IT Services and that Syntech IT is not responsible for any content or information accessed via the Syntech IT Services. The Customer will indemnify and keep indemnified Syntech IT and its directors, managers and other employees, and agents and contractors (Related Persons) should Syntech IT or its Related Persons incur loss, damage, fines, costs, or expenses as a result of Syntech IT being treated as the author or publisher of any content or information stored, accessed, or published by the Customer using the Syntech IT Services.
5. The Customer acknowledges that the Syntech IT Services are not intended or authorised for use in circumstances where failsafe performance is required or where failures or errors in the operation of the Syntech IT Services could lead to significant financial detriment, loss or damage, or to personal harm, and the Customer agrees not to use the Syntech IT Services in such circumstances. The Customer will indemnify and keep indemnified Syntech IT and its Related Persons from and against any loss, damage or liability resulting from the use of the Syntech IT Services contrary to this clause.
6. Syntech IT will not be liable to the Customer for any remote, indirect, consequential, special or incidental loss or damage, including without limitation, loss or damages resulting from loss of profit or loss of data or loss of electronic materials resulting from the Syntech IT Services. The Customer will indemnify Syntech IT and its Related Persons from and against any claim made against Syntech IT or any of the Related Persons by a third party as a result of the Syntech IT Services provided by Syntech IT to the Customer.
7. In no event will Syntech IT's aggregate liability to the Customer for damages on any basis associated with use of Syntech IT Services exceed the sum paid by the Customer to Syntech IT in the month immediately preceding a claim by the Customer.

## 10. TERMINATION

1. Either party may terminate the User Agreement immediately by giving notice in writing to the other if the other commits a material breach of any provision of the User Agreement which:

- can be rectified, and fails to rectify the breach within thirty days of notice being given by the party alleging the breach, describing the breach and the action which must be taken to rectify it; or
  - cannot be rectified.
2. Syntech IT may at its own absolute discretion cancel the Customer's Account and the Syntech IT Services to the Customer, subject to Syntech IT giving to the Customer at least twenty one days' prior notice of termination in writing.
    - The Customer may terminate a User Agreement by giving Syntech IT notice of termination in writing at least five business days before the end of any period for which the Customer has paid for provision of Syntech IT Services (**Paid-up Period**), such termination to take effect at the end of that Paid-up Period, or
  3. If the User Agreement is terminated by Syntech IT under section 10.1 or 10.2, all outstanding Charges will become immediately payable by the Customer to Syntech IT upon the giving of notice of termination.
  4. Syntech IT is not required to refund any prepaid Charges, unless the User Agreement is terminated by the Customer under section 10.1.  
In the event a refund is requested under this section 10.5, any refund will be for the unused portion of the subscription fee as at the date of termination.
  5. Syntech IT will erase, in a timely fashion upon termination of a Syntech IT Service, all data (including software, code, and backups) relating to that Service from Syntech IT systems unless Syntech IT and the Customer have agreed in writing the data is to be preserved for an agreed period of time. All costs associated with the storage of such data will be borne by the Customer.

## 11. SUB-CONTRACTS

1. Syntech IT may sub-contract the whole or any part of the performance of its obligations under the User Agreement without obtaining the Customer's consent.

## 12. VARIATION OF USER AGREEMENT

1. Syntech IT may modify the User Agreement, including the prices charged for Syntech IT Services, at any time by posting a revised User Agreement and/or revised pricing on Syntech IT's website, and send a notification to all Customers impacted by the change to the email address Syntech IT have on record. The Customer shall be deemed to have accepted such modifications to the User Agreement by continued use of the Syntech IT Services after such modifications have been posted.
2. This standard User Agreement may only be modified by a written agreement between Syntech IT and the Customer, with the Syntech IT signatory being the Syntech IT Director, or in accordance with section 12.1. The User Agreement and any such written agreement constitute the entire agreement between Syntech IT and the Customer.



### 13. NOTICE

1. Any notice issued by Syntech IT or the Customer pursuant to the User Agreement shall be in writing. Notices may be delivered by hand, by receipted mail, or by email to the email address Syntech IT have on file for the Customer, or Syntech IT's email address ([accounts@syntechit.com.au](mailto:accounts@syntechit.com.au)).
2. Notice will be treated as given:
  - in the case of hand delivery, on the date of delivery;
  - in the case of postal delivery, on the date of delivery recorded by the postal authority; or
  - in the case of email, on receipt by the sender of notification that the email has been received by the recipient's email server, but if the delivery or receipt is not on a business day or is after 5.00pm on a business day in the place where it is received, the notice is taken to be received at 9.00am on the next business day.
3. It is the Customer's responsibility to notify Syntech IT of any changes to its contact details.

### 14. GENERAL

1. The User Agreement (and the validity and enforceability of the User Agreement) are governed by and to be interpreted in accordance with the law of the State of Victoria in the Commonwealth of Australia. The parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria, and the federal courts of the Commonwealth of Australia. The parties irrevocably waive any right they may have to object to those courts exercising jurisdiction on the ground that the court is not a convenient forum.
2. If any provision of the User Agreement is illegal, unenforceable or void in any jurisdiction, then, with respect to that jurisdiction only:
  - that provision shall be read down if possible so that it is no longer illegal, unenforceable or void in that jurisdiction; and
  - if it is not possible to read down that provision, it shall be severed from the remaining provisions of the User Agreement, with respect to that jurisdiction only.
3. No act or omission by a party shall constitute a waiver of any of its rights under the User Agreement, other than an express waiver of those rights in writing signed by the party to be bound.
4. Syntech IT may assign or novate its rights and obligations under this User Agreement at any time.

5. Syntech IT may obtain information concerning the Customer from credit reporting agencies and may share information concerning the Customer's Syntech IT account with credit reporting agencies.
6. Syntech IT may receive, hold, and use personal information about the Customer in accordance with the Syntech IT Privacy Policy available at <https://www.syntechit.com.au/privacy-policy/>.
7. The User Agreement supersedes all prior agreements and understandings between the parties as it relates to the Syntech IT Services provided under this User Agreement, and constitutes the entire agreement between the parties relating to the subject matter of the User Agreement.